

impede the orderly and effective resolution of the issues in our pending proceeding concerning the introduction of market-based incentives for PLMR spectrum.¹⁶³ MariTEL has not convinced us that the public interest would be served by our making a decision on sharing before reaching a final decision in that proceeding; thus, we decline to do so.

8. Operational flexibility

51. *Proposal.* The Commission noted in the *Second Further Notice* its conclusion in another proceeding that broadband and narrowband CMRS licensees should have operational flexibility to provide fixed, mobile, or hybrid services,¹⁶⁴ and sought comment on whether to afford such flexibility to public coast stations.¹⁶⁵

52. *Decision.* We agree with MariTEL that allowing VHF public coast stations to provide fixed, mobile, or hybrid CMRS services on a co-primary basis with mobile services will be beneficial.¹⁶⁶ We believe that affording public coast station licensees operational flexibility will enhance their ability to meet customer requirements and demand, and promote regulatory symmetry between maritime CMRS providers and other CMRS providers. We further believe that this approach, combined with our enforcement of the construction requirements adopted today, will address MariTEL's concern about preserving the distress and safety features of the Maritime Services, particularly along waterways.¹⁶⁷

9. Regulatory status

53. *Proposal.* The Commission noted in the *Second Further Notice* that allowing geographic area licensees, partitionees, or disaggregatees to use their spectrum to provide a variety of commercial or private mobile communications would make it difficult to determine the regulatory status of each licensee.¹⁶⁸ The Commission proposed to establish a presumption that geographic area licensees are telecommunications carriers, or, in the alternative, to rely on applicants to specify the type of service(s) they intend to provide in sufficient detail to enable the Commission to determine whether the particular licensee will be a CMRS or a PMRS provider,¹⁶⁹ i.e., whether the licensee offers a mobile service that is provided for profit, interconnected with the public switched network, and is available to the public or a

¹⁶³ See *PLMR Report and Order*, 10 FCC Rcd at 10138-41.

¹⁶⁴ In this context, "broadband CMRS licensees" included PCS, cellular, and SMR, while "narrowband CMRS licensees" included paging, narrowband PCS, commercial 220 MHz service, and for-profit interconnected Business Radio Service. See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-6, 11 FCC Rcd 8965, 8976 (1996).

¹⁶⁵ *Second Further Notice*, 12 FCC Rcd at 16999.

¹⁶⁶ See MariTEL Comments at 13; see also Orion Comments at 2.

¹⁶⁷ See MariTEL Comments at 13.

¹⁶⁸ *Second Further Notice*, 12 FCC Rcd at 16999.

¹⁶⁹ *Id.* at 16999-17000.

substantial portion of the public.¹⁷⁰ It also proposed to allow any interested party to challenge the regulatory status originally granted to a geographic area licensee.¹⁷¹ The Commission sought comment on this approach and on the most efficient manner in which to administer the requirements of the Communications Act with respect to public coast station licensees.¹⁷²

54. *Decision.* We conclude that, as a general matter, geographic area licensees should be subject to a presumption that they are telecommunications carriers under the Communications Act, because this is the current nature of the public coast service. We note, however, that this presumption can be rebutted by specifically identifying the type of service or services the licensee intends to provide in sufficient detail to enable the Commission to determine whether the nature of the service will be CMRS or PMRS, common carrier or non-common carrier.¹⁷³ As in other licensing contexts,¹⁷⁴ we intend to rely primarily upon applicants' representations regarding their regulatory status while affording interested parties the opportunity to demonstrate that a licensee has not rebutted our presumption, provided these parties present specific allegations of fact supported by an affidavit of a person or persons with personal knowledge.¹⁷⁵ If a public coast station licensee who is authorized to provide only PMRS or non-common carrier service actually provides CMRS or common carrier service under that license, it will be subject to appropriate enforcement action.¹⁷⁶ This approach will allow us to carry out our regulatory responsibilities without imposing a hardship upon licensees.

55. In addition, we disagree with MariTEL's suggestion that we should forbear from imposing common carrier requirements on public coast stations pursuant to Section 10 of the Communications Act,¹⁷⁷ which regulation MariTEL contends is "unnecessary and not in the public interest."¹⁷⁸ MariTEL's request cannot be granted because it is too vague, both as to the specific provisions from which we should forbear from enforcing,¹⁷⁹ and as to why forbearance would be in the public interest.¹⁸⁰ We note, however,

¹⁷⁰ See 47 U.S.C. § 332(d)(1).

¹⁷¹ *Second Further Notice*, 12 FCC Rcd at 16999-17000.

¹⁷² *Id.*

¹⁷³ See MariTEL Comments at 14.

¹⁷⁴ See *CMRS Second Report and Order*, 9 FCC Rcd at 1461.

¹⁷⁵ See 47 U.S.C. § 309(d)(1). Geographic area licensees authorized to provide PMRS or non-common carrier services will be subject to Part 80 of our rules. Geographic area licensees authorized to provide CMRS or common carrier services will also be subject to our Title II rules applicable to other CMRS providers. See *CMRS Second Report and Order*, 9 FCC Rcd at 1475-85.

¹⁷⁶ See, e.g., 47 U.S.C. §§ 312(a), 503(b).

¹⁷⁷ 47 U.S.C. § 160.

¹⁷⁸ MariTEL Comments at 14.

¹⁷⁹ See *CMRS Second Report and Order*, 9 FCC Rcd at 1475.

that we already forbear from enforcing some common carrier requirements against CMRS operators,¹⁸¹ and that further forbearance is under consideration.¹⁸²

10. Safety watch

56. *Proposal.* Public coast stations serving rivers, bays, and inland lakes must maintain a continuous safety watch on marine VHF Channel 16 (156.800 MHz).¹⁸³ Presently, public coast licensees may request an exemption from this requirement upon demonstrating that federal, state, or local governments maintain a continuous watch over ninety-five percent of the station's service area.¹⁸⁴ The Commission proposed in the *Second Further Notice* to relieve public coast stations of the Channel 16 watch requirement by rule in cases where federal, state, or local governments already maintain the requisite coverage.¹⁸⁵

57. *Decision.* We adopt our safety watch proposal, with some modifications requested by the Coast Guard.¹⁸⁶ Specifically, a coast station where federal, state, or local governments maintain a continuous watch over ninety-five percent of the station's service area will not be required to maintain a safety watch, provided that the licensee (1) determines that the "ninety-five percent" criteria is met, (2) is responsible for notifying the appropriate Coast Guard district office thirty days prior to discontinuing the watch, and (3) is responsible for resuming the watch at the request of the Coast Guard or Commission. We nonetheless note that the Coast Guard may require a public coast licensee to continue or resume its safety watch temporarily during a system outage or until a replacement Coast Guard system is in place, or permanently. Notwithstanding our decision here, all coast stations shall, if required by the Coast Guard, remain capable of either immediately resuming the watch, or of providing the Coast Guard direct dial-up access to the necessary Channel 16 transceiver at no charge, so the Coast Guard can maintain the watch. In this connection, we note¹⁸⁷ the Coast Guard's description of the shortcomings of its VHF National

¹⁸⁰ See Hyperion Telecommunications, Inc., *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, CCB/CPD No. 96-3, 12 FCC Rcd 8596, 8607 (1997) ("While we are required under Section 10 to grant petitions for forbearance when we are able to make the requisite statutory findings, petitioners must support such requests with more than broad, unsupported allegations in order for us to exercise that statutory authority.").

¹⁸¹ *CMRS Second Report and Order*, 9 FCC Rcd at 1475-85.

¹⁸² Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, WT Docket No. 98-100, FCC 98-134 (released July 2, 1998).

¹⁸³ 47 C.F.R. § 80.303(a).

¹⁸⁴ 47 C.F.R. § 80.303(b).

¹⁸⁵ *Second Further Notice*, 12 FCC Rcd at 17000-01.

¹⁸⁶ See Coast Guard Comments at 6.

¹⁸⁷ Amendment of Part 81 of the Commission's Rules to Specify the Circumstances under which Class III-B Public Coast Stations May Be Exempted from the Watch Requirement on 156.8 MHz, *Report and Order*, PR Docket No. 79-68, 81 FCC 2d 340, 343 (1980).

Distress System, which is aging and has many coverage gaps.¹⁸⁸ Consequently, we reject MMR's suggestion that the safety watch requirement be eliminated because we conclude that its continuation is in the public interest in that it promotes safety at sea.¹⁸⁹ In addition, as MariTEL and Orion note, MMR incorrectly compares other CMRS providers, who have no safety watch requirement, to the Maritime Services, failing to take into account that other services are intended to be fully automated, and that they emerged in a different context from the Maritime Services, with their public safety component.¹⁹⁰

58. In the *Second Report and Order*, we authorized automated interconnection and therefore eliminated the requirement that each radiotelephone public coast station have a licensed radiotelephone operator at the station's control point.¹⁹¹ MariTEL argues in its petition for reconsideration that we should have retained a requirement that there always be an operator on duty somewhere in the system (though not necessarily at the nearest control point) with whom a vessel can communicate during an emergency.¹⁹² Orion opposes any such requirement for AMTS stations, on the grounds that such stations are intended to be fully automated.¹⁹³ We are not persuaded that the continued existence of public coast stations being required to maintain a safety watch justifies the reinstatement and expansion of the operator requirement for other stations. The Coast Guard did not contend that eliminating the operator requirement would jeopardize safety at sea,¹⁹⁴ though it notes that the MariTEL proposal would be one means of maintaining an exempt station's ability to resume a safety watch upon request.¹⁹⁵ Amending the operator requirement in the manner proposed by MariTEL would amount to reinstating that requirement for individual, non-integrated stations, and to creating a new requirement for AMTS stations and automated multi-station systems, which already were exempt from the operator requirement, and MariTEL has not shown that its proposal would produce a benefit commensurate with such a burden.¹⁹⁶ Thus, we decline to adopt MariTEL's proposal.

B. Competitive Bidding Procedures

1. Use of Competitive Bidding

59. *Proposal.* The Commission, in the *CMRS Second Report and Order*, classified the public

¹⁸⁸ See Coast Guard Comments at 6.

¹⁸⁹ MMR Comments at 11.

¹⁹⁰ See MariTEL Comments at 3-7; Orion Petition to Deny at 3.

¹⁹¹ *Second Report and Order*, 12 FCC Rcd at 16959.

¹⁹² MariTEL Petition at 3-4.

¹⁹³ Orion Petition to Deny at 3.

¹⁹⁴ *Second Further Notice*, 12 FCC Rcd at 16976-77.

¹⁹⁵ Coast Guard Reply Comments at 1.

¹⁹⁶ See 47 C.F.R. § 80.179(d) (1996).

coast service, including VHF, high seas, and AMTS public coast stations, as a CMRS.¹⁹⁷ Subsequently, in the *Competitive Bidding Second Report and Order*, the Commission determined that mutually exclusive applications for public coast station licenses would be resolved through competitive bidding.¹⁹⁸ It therefore proposed in the *Second Further Notice* to prescribe competitive bidding rules and designated entity provisions for auctioning public coast spectrum.¹⁹⁹

60. Following release of the *Second Further Notice*, Congress passed the Balanced Budget Act of 1997, which expanded and extended the Commission's auction authority.²⁰⁰ Section 309(j)(2) of the Communications Act formerly stated that mutually exclusive applications for initial licenses or construction permits were auctionable if the principal use of the spectrum was for subscription-based services and competitive bidding would promote the expressed objectives of the Act.²⁰¹ As amended by the Balanced Budget Act, Section 309(j) of the Communications Act provides that, "If . . . mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2) the Commission *shall* grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection."²⁰²

61. *Decision.* Several commenters support the use of competitive bidding.²⁰³ While some parties oppose the use of competitive bidding to grant licenses for the public coast spectrum, their contentions are inconsistent with our earlier conclusion that the public coast service is subject to competitive bidding, which conclusion is unchanged by the Balanced Budget Act.²⁰⁴ As noted, the Balanced Budget Act provides that all licenses and construction permits for which mutually exclusive applications are accepted, with certain exceptions not relevant here, shall be granted by means of competitive bidding.²⁰⁵ We therefore believe that we lack discretion to resolve mutually exclusive public coast license applications by any means other than competitive bidding. Similarly, the Balanced Budget Act expressly provides that competitive bidding shall not be used for public safety radio services, so the inland VPC channel pairs set aside for public safety use shall be distributed by other means, to be decided

¹⁹⁷ *Second Further Notice*, 12 FCC Rcd at 17011 (citing *CMRS Second Report and Order*, 9 FCC Rcd at 1448).

¹⁹⁸ *Second Further Notice*, 12 FCC Rcd at 17011 (citing *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348); 47 C.F.R. § 1.2102(a)(2) (citing 47 C.F.R. Part 80, Subpart J)).

¹⁹⁹ *Second Further Notice*, 12 FCC Rcd at 17011-12.

²⁰⁰ See 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, § 3002).

²⁰¹ 47 U.S.C. § 309(j)(2) (1996).

²⁰² 47 U.S.C. § 309(j)(1) (as amended by Balanced Budget Act, § 3002) (emphasis added).

²⁰³ MariTEL Comments at 7 (urging the Commission to act as expeditiously as possible to license this spectrum using competitive bidding because it is the most efficient and speedy means of licensing multiple channels on a geographic basis); MariTEL Reply Comments at 3; Orion Comments at 10; BRC Reply Comments at n. 2 (noting that under the Balanced Budget Act, "the FCC must use auctions to award initial licenses and construction permits in virtually all cases where mutual exclusivity exists").

²⁰⁴ Globe Wireless Comments at 3-4; Robert Sassaman Comments at 1.

²⁰⁵ See 47 U.S.C. §§ 309(j)(1), 309(j)(2) (as amended by Balanced Budget Act, § 3002).

as part of our pending public safety proceeding.²⁰⁶ Therefore, we reiterate that we shall employ competitive bidding procedures to resolve mutually exclusive public coast station applications.

2. Competitive Bidding Issues

62. *Proposal.* The *Second Further Notice* was released shortly after the *Part 1 Order and Notice of Proposed Rulemaking* that adopted certain rules to streamline auction procedures and proposed uniform competitive bidding rules that would apply generally to all auctionable services.²⁰⁷ Pending the adoption of final uniform competitive bidding rules, however, the Commission proposed to adopt service-specific rules to govern public coast auctions.²⁰⁸ In addition, it sought comment in the *Second Further Notice* on the establishment of a "small business" definition for public coast spectrum, noting our intention, as iterated in the *Second Memorandum Opinion and Order* in the competitive bidding docket, of establishing definitions for "small business" on a service-by-service basis.²⁰⁹ Specifically, the Commission sought comment on whether we should apply one of the existing "small business" definitions to public coast stations or adopt a new definition, and comment on what small business provisions and terms should be offered to public coast small business licensees.²¹⁰ The Commission tentatively concluded that, for purposes of determining small business status of public coast applicants, it would attribute the gross revenues of all the applicants' affiliates, its controlling principals, and their affiliates, and that the definition of affiliate in the public coast context should include an exception for Indian tribes, Alaska Region, and Village Corporations.²¹¹ The Commission also tentatively decided against providing special consideration in the competitive bidding procedures for incumbent licensees.²¹²

63. In authorizing the Commission to use competitive bidding, Congress mandated that we "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."²¹³ Congress further provided that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and

²⁰⁶ See *supra* note 100.

²⁰⁷ *Second Further Notice*, 12 FCC Rcd at 17011 (citing Amendment of the Commission's Competitive Bidding Rules, *Order and Notice of Proposed Rulemaking*, WT Docket No. 97-82, 12 FCC Rcd 5686 (1997)).

²⁰⁸ *Id.*

²⁰⁹ *Second Further Notice*, 12 FCC Rcd at 17012 (citing Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7268-69 (1994)); see also *Part 1 Third Report and Order*, 13 FCC Rcd at 388.

²¹⁰ *Second Further Notice*, 12 FCC Rcd at 17012.

²¹¹ *Id.*

²¹² *Id.* at 16898-90.

²¹³ 47 U.S.C. § 309(j)(4)(D).

women."²¹⁴ The Commission therefore sought comment in the *Second Further Notice* on whether small business provisions are sufficient to promote participation by businesses owned by minorities and women and rural telephone companies.²¹⁵ To the extent that commenters proposed additional provisions to ensure participation by minority- and women-owned businesses, they were invited also to address how such provisions should be crafted to meet the relevant standards of judicial review.²¹⁶

64. *Decision.* Recently, we adopted the *Part 1 Third Report and Order*, which establishes a uniform set of provisions, based on our experience with auctions to date, and allows us to conduct future auctions in a more consistent, efficient, and effective manner.²¹⁷ Therefore, we will follow the uniform provisions adopted in the *Part 1 Third Report and Order* for most of the competitive bidding issues raised in the *Second Further Notice*, and the uniform competitive bidding rules found in Subpart Q of Part 1 of the Commission's rules will apply to the auction of public coast spectrum. Consistent with this approach, matters such as the appropriate competitive bidding design for the auction of public coast spectrum, as well as minimum opening bids or reserve prices and maximum bid increments, will be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority.²¹⁸ In this *Third Report and Order and Memorandum Opinion and Order*, however, we adopt service-specific provisions applicable to designated entities bidding in the public coast spectrum auctions. We note, however, that we may seek comment in a future proceeding regarding whether these provisions should be modified for auctions of spectrum allocated to the high seas and AMTS services.²¹⁹

65. As we noted in the *Second Further Notice*, our goal in adopting special small business provisions is to promote and facilitate the participation of small businesses in the public coast auctions and in the provision of service.²²⁰ For purposes of public coast auctions, we will define "small" businesses as entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed fifteen million dollars.²²¹ We will define "very small" businesses as entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed three million dollars. MarITEL proposes that small businesses be defined as those with gross revenues not exceeding three million dollars (averaged over the past three years), because the Commission has employed this standard elsewhere and it represents the level of income a small business in the Maritime Services today can expect to produce, while a higher level would

²¹⁴ 47 U.S.C. § 309(j)(3)(B).

²¹⁵ *Second Further Notice*, 12 FCC Rcd at 17012.

²¹⁶ *Id.* at 17012-13 (citing *United States v. Virginia*, 116 S.Ct. 2264 (1996); *Adarand Constructors v. Peña*, 115 S.Ct. 2097 (1995)).

²¹⁷ *See Part 1 Third Report and Order*, 13 FCC Rcd at 377-81.

²¹⁸ *See, e.g., id.* at 448-49, 454-55; *see also* 47 C.F.R. §§ 0.131(c), 0.331, 0.332.

²¹⁹ *See supra* note 3.

²²⁰ *Second Further Notice*, 12 FCC Rcd at 17012.

²²¹ This formulation is consistent with our determination in the *Part 1 Third Report and Order* that our service-specific small business definitions will be expressed in terms of average gross revenues for the preceding three years "not to exceed" particular amounts. *See Part 1 Third Report and Order*, 13 FCC Rcd at 388-89.

allow larger companies to compete with the same bidding credits as current public coast licensees.²²² However, we share the concern of Orion and Murray Cohen that a single definition of small business could effectively exclude from participation a number of current licensees that are too small to compete with large well-capitalized entities unless they are made eligible for additional bidding credits.²²³ Also, we note that all of the services MariTEL cited as precedent for using a three million dollar standard also featured a second tier with a threshold of not more than fifteen million dollars in gross revenues. Thus, we believe that two tiers of bidding credits will allow current public coast licensees to compete favorably with larger entities, without denying entities with relatively small gross revenues the opportunity to participate meaningfully in the auctions.

66. We decided in the *Part 1 Third Report and Order* to continue to define small businesses as we have in the past, based on the characteristics and capital requirements of the specific service,²²⁴ rather than, as suggested by MariTEL, on the prospective and likely applicants' assets.²²⁵ This approach has afforded us desirable flexibility to benefit small businesses, and is consistent with the Small Business Administration's practice of approving small business size standards on a service-by-service basis.²²⁶ We determined in the *Part 1 Third Report and Order* that our service-specific small business definitions thenceforth would be expressed in terms of average gross revenues, which we believe provides an accurate, equitable, and easily ascertainable measure of business size.²²⁷ Assets, being potentially fluid and subject to inconsistent valuation (e.g., intangibles), are generally much less ascertainable than gross revenues or numbers of employees. Although we have adopted an asset test for eligibility for particular blocks of licenses in broadband PCS auctions, we have never before employed an asset test for eligibility for small business size standards. We also note that the Small Business Administration, the rules of which have formed the basis for much of our own consideration of small business provisions, presently does not employ asset tests in its business size standards except in the context of national and commercial banks, savings institutions, and credit unions.²²⁸ Nor does the Small Business Act's statutory definition of small business size use a total assets test.²²⁹ Consistent with the *Part 1 Third Report and Order*, we therefore reject MariTEL's suggestion and will not adopt an asset test for the auction of public coast licenses.

67. Since we received no comments to the contrary, we also adopt, with a slight modification, our tentative conclusion to attribute the gross revenues of the applicant, its controlling principals and their affiliates. Specifically, we refer to "controlling interests" rather than "controlling principals." In addition,

²²² MariTEL Comments at 15-16 (noting the size standards employed in paging, the upper 10 MHz of 800 MHz SMR, and 900 MHz SMR).

²²³ Orion Comments at 10; Murray Cohen Comments at 1.

²²⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd at 388.

²²⁵ MariTEL Comments at 15 (citing Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403 (1994)).

²²⁶ See *Part 1 Third Report and Order*, 13 FCC Rcd at 388.

²²⁷ See *id.* at 388-89.

²²⁸ See 13 C.F.R. § 121.201, Standard Industrial Classifications 6021-6082 & n. 7.

²²⁹ See 15 U.S.C. § 632(c).

we provide a definition of "controlling interest" to clarify the application of the attribution rule in determining whether an entity qualifies to bid as a small business. In calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of the applicant and their affiliates.²³⁰ This approach is consistent with our proposal in the *Part 1 Second Further Notice*,²³¹ and is similar to the attribution rules we have employed for the recent LMDS and 800 MHz SMR auction proceedings.²³²

68. A "controlling interest" includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is 50.1% of the voting stock of a corporation or, in the case of a partnership, the general partners. *De facto* control is determined on a case-by-case basis, and includes the criteria set forth in *Ellis Thompson*.²³³ We recently sought comment in the *Part 1 Second Further Notice* on whether we should impose a minimum equity requirement (e.g., fifteen percent) on any person or entity identified as a controlling interest.²³⁴ The "controlling interest" definition also provides specific guidance on calculation of various types of ownership interests. For purposes of calculating equity held in an applicant, the definition provides for full dilution of certain stock interests, warrants, and convertible debentures.²³⁵ In addition, the definition provides for attribution of partnership and other ownership interests including stock interests held in trust, non-voting stock, and indirect ownership through intervening corporations. Once principals or entities with a controlling interest are determined under the definition, only the revenues of those principals or entities and their affiliates will be counted for small business eligibility.

69. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is

²³⁰ We note that in the *Part 1 Third Report and Order*, we exempted Indian Tribes and Alaska Region and Village Corporations from the definition of affiliate found in Part 1, Subpart Q of our rules. See *Part 1 Third Report and Order*, 13 FCC Rcd at 392-93. This definition will apply in the public coast auction. See 47 C.F.R. § 1.2111(b)(4)(xi).

²³¹ See *Part 1 Third Report and Order*, 13 FCC Rcd at 477-78.

²³² See Amendment of Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, 12 FCC Rcd 12545, 12692-93 (1997); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, FCC 97-223, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19169 (1997).

²³³ See *Ellis Thompson Corp.*, 76 Rad. Reg. 2d (P & F) 1125, 1127-28 (1994) ("*Ellis Thompson*"), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits. See also *Intermountain Microwave*, 24 Rad. Reg. (P & F) 983 (1963); Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 309(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277 (1991).

²³⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd at 478.

²³⁵ See 47 C.F.R. § 1.2110(b)(4)(v); cf. 47 C.F.R. § 24.709(b)(7).

owned by four entities, each of which has twenty-five percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. Treating such a corporation in this way is similar to our treatment of a general partnership—all general partners are considered to have a controlling interest. This rule, we believe, looks to substance over form in assessing eligibility for small business status.

70. We note that our intent here is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace.²³⁶ We believe that this controlling interest threshold will function effectively to ensure that only those entities truly meriting small business status are eligible for small business provisions. In particular, we believe that the *de jure* and *de facto* concepts of control used to determine controlling interest in an applicant and the application of our affiliation rules will effectively prevent larger firms from illegitimately seeking status as a small business. Moreover, as we discussed in the *Part 1 Third Report and Order*, we believe that requiring detailed ownership information will ensure that applicants claiming small business status qualify for such status, and ensure compliance by all applicants with spectrum caps and other ownership limits.²³⁷ Therefore, we emphasize that bidders will be subject to the ownership disclosure requirements set forth in Section 1.2112 of our rules.²³⁸

71. MariTEL and Ross contend that incumbent public coast service licensees should be given special consideration in our competitive bidding procedures, because incumbent licensees merely extending their coverage would provide service sooner than new geographic area licensees, and the public safety nature of the public coast service mandates procedures that will lead to prompter service.²³⁹ We agree with BRC,²⁴⁰ however, that new entrants and incumbents should have an equal opportunity to obtain spectrum.²⁴¹ Moreover, we have never given incumbents such a benefit (which appears to be prohibited by Section 309(j)(4)(D) of the Communications Act), and any incumbents that qualify can avail themselves of the special consideration available to small businesses.²⁴²

²³⁶ We note, however, that in seeking comment regarding the auction of initial licenses for certain broadcast stations, the Commission has proposed stricter attribution standards and eligibility requirements for applicants seeking to qualify for minority-based provisions. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Notice of Proposed Rulemaking*, MM Docket No. 97-234, 12 FCC Rcd 22363, 22399-401 (1997).

²³⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 419.

²³⁸ See 47 C.F.R. § 1.2112.

²³⁹ MariTEL Comments at 3-4; Ross Comments at 3.

²⁴⁰ BRC Reply Comments at 2.

²⁴¹ See, e.g., Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, PR Docket No. 94-131, 10 FCC Rcd 9589, 9607 (1995) (it is in the public interest to encourage the widest possible variety of applicants by not giving a preference to incumbents, for new entrant may value the spectrum more highly than existing licensee).

²⁴² 47 U.S.C. § 309(j)(4)(D).

72. In addition, we note that we received no comments suggesting any particular level of bidding credits. Thus, we will conform our bidding credit levels for the public coast auctions to the schedule adopted in the *Part 1 Third Report and Order*.²⁴³ Specifically, the *Part 1 Third Report and Order* adopted bidding credits of thirty-five percent for entities with annual gross revenues not to exceed three million dollars, and twenty-five percent for entities with annual gross revenues not to exceed fifteen million dollars.²⁴⁴ In conformity with the small business size definitions that we adopt herein, we thus determine that entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed three million dollars will receive a thirty-five percent bidding credit, and entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed fifteen million dollars will receive a twenty-five percent bidding credit. In addition, in the *Part 1 Third Report and Order*, we held that installment payments will not be used in the immediate future as a means of financing small business participation in Commission auctions, and we received no comment in this proceeding on the use of installment payments.²⁴⁵ Thus, installment payments will not be available to public coast auction participants for the reasons discussed in the *Part 1 Third Report and Order*.

73. We also received no comments on whether small business provisions are sufficient to promote participation by businesses owned by minorities and women and rural telephone companies. No commenter proposed additional provisions to ensure participation by minority- and women-owned businesses, or suggested how such provisions should be crafted to meet the relevant standards of judicial review. We remain committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. However, commenters in this proceeding have submitted no suggestions, evidence, or data to support race- or gender-based auction provisions. Therefore, we conclude that we do not have a sufficient record to support such special provisions at this time. As we noted in the *Part 1 Third Report and Order*, we have commenced a series of studies, and have other studies in the planning process, to examine barriers encountered by minorities and women in the auctions process and the secondary market for licenses.²⁴⁶ Once those studies are complete, we will have a more extensive record to judge our ability to provide through our auctions program economic opportunity among businesses owned by members of minority groups and women, as required in Section 309(j).²⁴⁷ We also believe that our standardization, through the *Part 1 Third Report and Order*, of the rules regarding definitions of eligible entities, unjust enrichment, and bidding credits will assist small, minority- and women-owned businesses because the resulting predictability will facilitate effective business planning and capital accumulation.²⁴⁸

²⁴³ *Part 1 Third Report and Order*, 13 FCC Rcd at 402-03.

²⁴⁴ *Id.* at 404.

²⁴⁵ *Id.* at 397-98.

²⁴⁶ *Id.* at 386-87 & n. 36 (citing, e.g., Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, Report, GN Docket No. 96-113, 12 FCC Rcd 16802 (1997)).

²⁴⁷ See 47 U.S.C. § 309(j)(4)(C),(D).

²⁴⁸ See *Part 1 Third Report and Order*, 13 FCC Rcd at 386.

IV. PROCEDURAL MATTERS

A. Suspension of Acceptance and Processing of Applications

74. In the *Second Further Notice*, the Commission temporarily suspended, until March 17, 1998, acceptance of public coast station and PLMR applications for new licenses to use VHF spectrum (156-162 MHz), amendments to such applications, applications to modify existing licenses, and amendments to such modifications, except applications involving renewals, transfers, assignments, and modifications that proposed neither to (1) expand a station's service area nor (2) obtain additional public coast VHF spectrum.²⁴⁹ It also suspended the processing of public coast station applications to use VHF spectrum that were pending when the *Second Further Notice* was adopted, except those (1) that were not mutually exclusive with other applications as of the date the *Second Further Notice* was adopted, and (2) as to which the relevant period for filing competing applications had expired as of that date.²⁵⁰ On March 17, 1998, the Wireless Telecommunications Bureau extended the suspension until the effective date of the final rules adopted in this *Third Report and Order and Memorandum Opinion and Order*.²⁵¹

75. Due to the transition to geographic area licensing in this *Third Report and Order and Memorandum Opinion and Order*, all applications to use VHF public coast spectrum the processing of which was suspended shall be dismissed. This action is consistent with the general approach we have taken in other services where we have transitioned to geographic area licensing and auction rules.²⁵² In addition, the freeze on filing new applications to use this spectrum shall remain in effect beyond the date that the final rules adopted herein become effective, and until such time as the Wireless Telecommunications Bureau begins to accept applications for the VHF public coast auction. We decline the suggestion of UTC and ITA/CICS to lift the freeze on PLMR applications proposing to share public coast VHF spectrum.²⁵³ They contend that such licenses present no barrier to the proposed geographic licensing process or to existing or future maritime services, but we conclude that maintaining the freeze in all areas for all applicants is necessary for the orderly and effective implementation of the decisions made in this proceeding.

76. In the *Part 1 Third Report and Order*, the Commission delegated to the Chief of the Wireless Telecommunications Bureau authority to prescribe and set forth procedures for individual auctions.²⁵⁴ The Wireless Telecommunications Bureau shall implement auction procedures for VHF (156-162 MHz) public coast stations, including the general design and timing of the auctions; the number and grouping of authorizations to be offered in a particular auction; the manner of submitting bids; the amount of bid increments; activity and stopping rules; and application and payment requirements, including the amount of upfront payments; and shall announce such procedures by Public Notice.

²⁴⁹ *Second Further Notice*, 12 FCC Rcd at 17015.

²⁵⁰ *Id.*

²⁵¹ Applications for Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Order*, 13 FCC Rcd 5240, 5241 (WTB 1998).

²⁵² See, e.g., *Paging Second Report and Order*, 12 FCC Rcd at 2739.

²⁵³ UTC Comments at 4; ITA/CICS Comments at 5-6.

²⁵⁴ *Part 1 Third Report and Order*, 13 FCC Rcd at 484.

B. Additional Matters

77. In the *Second Report and Order*, the Commission deleted the operator requirement for radiotelephone coast stations, but declined to address MMR's suggestion to delete the radiotelegraph coast station operator requirement.²⁵⁵ The Commission stated that it would request comments on the issue in the *Second Further Notice*, but it inadvertently failed to do so.²⁵⁶ MMR again has suggested eliminating the operator requirement for radiotelegraph coast stations,²⁵⁷ but we cannot act on the proposal because potentially affected parties have not received adequate notice.²⁵⁸ We conclude that this issue presently is not ripe for decision, but we may revisit it at a later time.

C. Regulatory Flexibility Act

78. Appendix B contains a Final Regulatory Flexibility Analysis with respect to this *Third Report and Order and Memorandum Opinion and Order*.

D. Paperwork Reduction Act of 1995 Analysis

79. This *Third Report and Order and Memorandum Opinion and Order* contains neither a new nor a modified information collection.

E. Ordering Clauses

80. Authority for issuance of this *Third Report and Order and Memorandum Opinion and Order* is contained in Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

81. Accordingly, IT IS ORDERED that Parts 20, 80, and 90 of the Commission's Rules, 47 C.F.R. Parts 20, 80, 90, and 95, ARE AMENDED as specified in Appendix F.

82. IT IS FURTHER ORDERED that, except for the dismissal set forth in paragraph 83 and the temporary suspension set forth in paragraph 84, this *Third Report and Order and Memorandum Opinion and Order* will be effective 60 days after publication in the Federal Register.

83. IT IS FURTHER ORDERED that, effective July 6, 1998, pending applications to use public coast station spectrum under Parts 80 or 90 of the Commission's Rules, 47 C.F.R. Parts 80 and 90 that were held in abeyance pursuant to the *Second Report and Order and Second Further Notice of Proposed Rulemaking* and Applications for Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Order*, DA 98-522 (WTB released Mar. 17, 1998), ARE DISMISSED.

²⁵⁵ *Second Report and Order*, 12 FCC Rcd at 16976-77.

²⁵⁶ *Id.*

²⁵⁷ MMR Comments at 8.

²⁵⁸ *MCI Telecommunications Corp. v. FCC*, 57 F.3d 1136, 1142 (D.C. Cir. 1995); *AFL-CIO v. Donovan*, 757 F.2d 330, 339-40 (D.C. Cir. 1985).

84. IT IS FURTHER ORDERED that, effective July 6, 1998, no new applications to use VHF public coast station spectrum under Parts 80 or 90 will be accepted for filing, except applications that do not propose to (1) expand a station's service area, or (2) obtain additional public coast spectrum frequencies, until the Wireless Telecommunications Bureau begins to accept applications to participate in the VHF public coast auction, which shall be announced by Public Notice.

85. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Third Report and Order and Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. IT IS FURTHER ORDERED, pursuant to Section 1.46(b) of the Commission's Rules, 47 C.F.R. § 1.46(b), that the Motion to Accept Late-Filed Comments filed by MariTEL Corporation IS GRANTED.

87. IT IS FURTHER ORDERED that Orion Telecom's Petition to Set Aside the Coast Guard Petition for Rule Making IS DENIED.

88. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by MariTEL Corporation IS DENIED.

F. Contact for Information

89. For further information, contact Scot Stone of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, at (202) 418-0680 or via E-Mail to "sstone@fcc.gov"; or Anne Napoli of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418-0660 or via E-mail to "anapoli@fcc.gov".

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas
Secretary

APPENDICES

APPENDIX A - LIST OF COMMENTERS

Comments

American Waterways Operators
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Murray Cohen
Forestry-Conservation Communications Association (FCCA)
Globe Wireless
Industrial Telecommunications Association and Council of Independent Communications Suppliers (ITA/CICS)
WJG MariTEL Corporation (MariTEL)
Mobile Marine Radio, Inc. (MMR)
State of Montana
National Association of Broadcasters and Association for Maximum Service Television (NAB/MSTV)
National Marine Electronics Association (NMEA)
Fred Daniel d/b/a Orion Telecom (Orion)
Paging Systems, Inc. (PSI)
Ross Engineering Company (Ross)
Robert H. Sassaman
United States Coast Guard (Coast Guard)
UTC

Reply Comments

BR Communications (BRC)
Globe Wireless
ITA/CICS
MariTEL
NAB/MSTV
Orion
Ross
Coast Guard

APPENDIX B - FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rule Making* in this proceeding (*Second Further Notice*). The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the *Third Report and Order*

Our objective is to simplify our licensing process for VHF public coast stations. Specifically, this action will: (1) convert licensing of VHF public coast station spectrum from site-by-site licensing to geographic area licensing, (2) simplify and streamline the VHF public coast spectrum licensing procedures and rules, (3) increase licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) introduce market-based forces into the Maritime Services by using competitive bidding procedures (auctions) to resolve mutually exclusive applications for public coast spectrum. We find that these actions will increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted in response to the IRFA. In general comments on the *Second Further Notice*, however, some small business commenters raised issues that might affect small business entities. In particular, some small business commenters argued that geographic licensing should be used only in certain areas; or that incumbent licensees be permitted to expand their systems before any auctions are held; or that license areas should be small enough to permit smaller licensees to participate in auctions, so that small business do not have to bid for territory far exceeding their operating needs. The Commission carefully considered each of these comments in reaching the decision set forth herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The rules adopted herein will apply to licensees using public coast spectrum. The Commission has not developed a definition of the term "small entity" specifically applicable to public coast station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing less than 1,500 persons. See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of current or prospective public coast station licensees which are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. There are over 100 public coast station licensees. Based on the proposals contained herein, it is unlikely that more than 50 licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately 150 public coast station licensees which are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

All small businesses that choose to participate in the competitive bidding for these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under Part 1, Subpart Q of the Commission's Rules, 47 C.F.R. Part 1, Subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the business is in fact small. Prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060-0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information demonstrating that a business wishing to qualify for installment payments and bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business working with the information in a bidder information package to file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier), which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission in this proceeding has considered comments on ways to implement broad changes to the Maritime Services rules. In doing so, the Commission has adopted alternatives which minimize burdens placed on small entities. First, it has decided to establish a presumption that regional licensees are telecommunications carriers, avoiding the need for small telecommunications to provide detailed information about their operations. Also, it has exempted by rule from the Channel 16 safety watch requirement public coast stations whose areas are served by government stations, replacing the prior requirement that such coast stations individually request an exemption. In addition, the Commission has eased the construction requirements for VHF public coast stations.

The Commission considered and rejected several significant alternatives. It rejected the alternative of licensing all VHF public coast spectrum by Coast Guard District. Instead, it will license such spectrum in areas removed from major waterways by inland VHF Public Coast Station Area (VPCs), identical to Economic Areas (EAs), allowing small entities there to participate in the auction without bidding for territory far exceeding their operating needs. The Commission rejected the alternative of delaying the auctions for the inland VPCs by holding frequencies open for public safety applications. Instead, the Commission designated public safety channels in advance. The Commission rejected the alternative of requiring each geographic area licensee to provide detailed information about the services it will offer, so the Commission could determine whether the licensee is a telecommunications carrier. Instead, the Commission established a rebuttable presumption that geographic area licensees are telecommunications carriers, so only those seeking to avoid that classification need submit such information.

The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

APPENDIX C - VHF COAST STATION INFORMATION

The table below lists the public correspondence frequency pairs as set forth in 47 C.F.R. § 80.371(c).

Channel number	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
24	157.200	161.800
25	157.250	161.850
26	157.300	161.900
27	157.350	161.950
28	157.400	162.000
84	157.225	161.825
85	157.275	161.875
86	157.325	161.925
87	157.375	161.975
88	157.425	162.025

APPENDIX D - VHF PUBLIC COAST STATION AREA (VPC) INFORMATION

VPC 1 (Northern Atlantic) consists of EAs 1-5, and 10.

VPC 2 (Mid-Atlantic) consists of EAs 9, 11-23, 25, 42, and 46.

VPC 3 (Southern Atlantic) consists of EAs 24, 26-34, 37, 38, 40, 41, and 174.

VPC 4 (Mississippi River) consists of EAs 35, 36, 39, 43-45, 47-53, 67-107, 113, 116-120, 122-125, 127, 130-134, and 176.

VPC 5 (Great Lakes) consists of EAs 6-8, 54-66, 108, and 109.

VPC 6 (Southern Pacific) consists of EAs 160-165.

VPC 7 (Northern Pacific) consists of EAs 147 and 166-170.

VPC 8 (Hawaii) consists of EA 172, 173, and 175.

VPC 9 (Alaska) consists of EA 171.

VPC 10 (Grand Forks) consists of EA 110.

VPC 11 (Minot) consists of EA 111.

VPC 12 (Bismarck) consists of EA 112.

VPC 13 (Aberdeen) consists of EA 114.

VPC 14 (Rapid City) consists of EA 115.

VPC 15 (North Platte) consists of EA 121.

VPC 16 (Western Oklahoma) consists of EA 126.

VPC 17 (Abilene) consists of EA 128.

VPC 18 (San Angelo) consists of EA 129.

VPC 19 (Odessa-Midland) consists of EA 135.

VPC 20 (Hobbs) consists of EA 136.

VPC 21 (Lubbock) consists of EA 137.

VPC 22 (Amarillo) consists of EA 138.

VPC 23 (Santa Fe) consists of EA 139.

VPC 24 (Pueblo) consists of EA 140.

VPC 25 (*Denver-Boulder-Greeley*) consists of EA 141.

VPC 26 (*Scottsbluff*) consists of EA 142.

VPC 27 (*Casper*) consists of EA 143.

VPC 28 (*Billings*) consists of EA 144.

VPC 29 (*Great Falls*) consists of EA 145.

VPC 30 (*Missoula*) consists of EA 146.

VPC 31 (*Idaho Falls*) consists of EA 148.

VPC 32 (*Twin Falls*) consists of EA 149.

VPC 33 (*Boise City*) consists of EA 150.

VPC 34 (*Reno*) consists of EA 151.

VPC 35 (*Salt Lake City-Ogden*) consists of EA 152.

VPC 36 (*Las Vegas*) consists of EA 153.

VPC 37 (*Flagstaff*) consists of EA 154.

VPC 38 (*Farmington*) consists of EA 155.

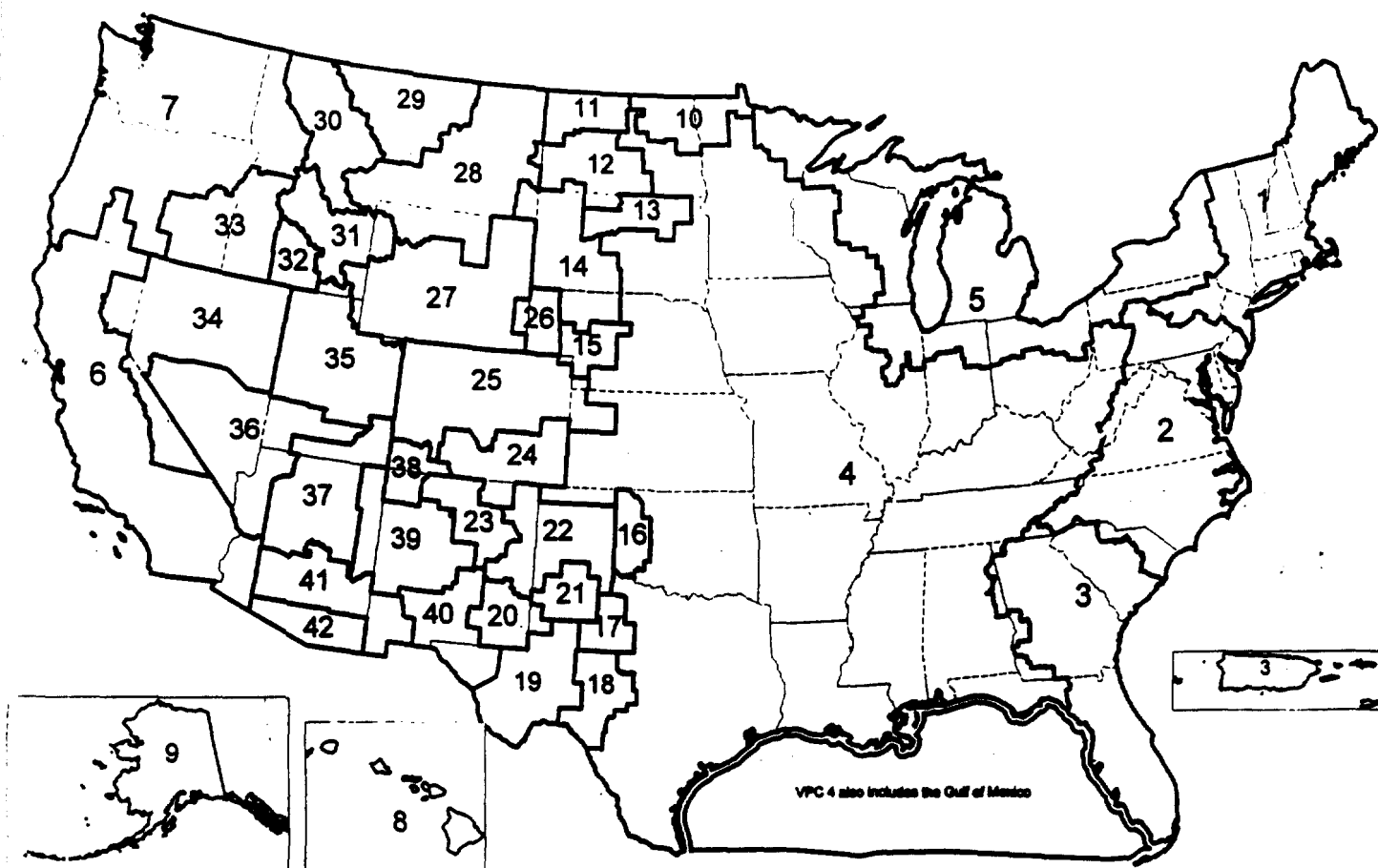
VPC 39 (*Albuquerque*) consists of EA 156.

VPC 40 (*El Paso*) consists of EA 157.

VPC 41 (*Phoenix-Mesa*) consists of EA 158.

VPC 42 (*Tucson*) consists of EA 159.

VHF Public Coast Station Areas (VPC)



VPC 8 also includes:
American Samoa, Guam, and the Northern Marianas Islands

Federal Communications Commission
Wireless Telecommunications Bureau

APPENDIX E - PUBLIC SAFETY SET-ASIDE

Inland VPC	Channels Set Aside for Public Safety
10	84, 25
11	84, 25
12	84, 25
13	84, 25
14	84, 25
15	84, 25
16	25, 85
17	25, 85
18	25, 85
19	25, 85
20	25, 85
21	25, 85
22	25, 85
23	84, 25
24	84, 25
25	84, 25
26	84, 25
27	84, 25
28	84, 25
29	84, 25
30	84, 25
31	25, 85
32	25, 85
33	84, 25
34	84, 25
35	25, 85
36	84, 25

37	84, 25
38	84, 25
39	84, 25
40	25, 85
41	84, 25
42	84, 25

APPENDIX F - FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 20, 80, and 90 are amended as follows:

I. Part 20 - Commercial Mobile Radio Services

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251-54, 303, and 332 unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) and (b)(1) to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and Public Coast Station licensees or applicants, proposing to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service and Public Coast Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service or Public Coast Station service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3 of this chapter. Any application requesting to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

* * * * *

II. Part 80 - Stations in the Maritime Services

3. The authority citation for Part 80 is amended to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.3 is amended by revising paragraph (b) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of Commission actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart Q of Part 1 contains rules governing competitive bidding procedures for resolving mutually exclusive applications for certain initial licenses.

* * * * *

5. Section 80.25 is revised to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal, except that licenses for VHF public coast stations will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal. Licenses, other than Public Coast and Alaska Public Fixed stations, may be renewed up to ninety (90) days after the date the license expires.

* * * * *

6. Section 80.49 is revised to read as follows:

§80.49 Construction and regional service requirements.

(a) *Public coast stations.*

(1) Each VHF public coast station geographic area licensee must make a showing of substantial service within its region or service area (subpart P) within five years of the initial license grant, and again within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based VHF public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(2) For LF, MF, HF, and AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within eight months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(b) *Public fixed stations.* When a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

7. A new section 80.60 is added to read as follows: